

NEW BUSINESS:

40-44 Mill Plain Rd – Application for Special Exception to Allow Uses Exceeding 500 Vehicle Trips per day in the CA-80 Zone – 40-44 Mill Plain Rd. (#E15110) – SE #705. Public hearing scheduled for 11/17/10.

83 Wooster Heights LLC – Application for Special Exception to allow Rooftop Telecommunication Facility (Metro PCS of NY LLC) in the IL-40 Zone – 83 Wooster Heights Rd. (#G18061) – SE #706. Public hearing scheduled for 11/17/10.

Mr. Keller said both of these applications would be on file in the Planning Office at City Hall.

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OLD BUSINESS FOR CONSIDERATION AND POSSIBLE ACTION:

Levine Sapan Levine LLC – Application for Special Exception for Warehouse/Storage Addition (“Levine Automotive”) in the IL-40 Zone – 3-5 Jansen St. (#K15093, #K15094, #K15095 & #K14136) – SE #702.

Mrs. Emminger asked the Commission members for their input on this. Everyone agreed that it should be a resolution of approval since Mr. Virbickas has addressed all of the concerns that have come up so far. Mr. Urice said he did not see any additional problems as long as the conditions they have discussed were included in the resolution. There were no other comments.

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REFERRALS:

8-24 Referral - Lease or License Agreement - BRT, Crosby St. & Lee Hartell Dr.

Mrs. Emminger said this had been sent back to the Commission for additional information. Nothing has changed from since the Commission gave this a positive recommendation at the July 27, 2010 meeting. She explained that the ad hoc committee had tabled this looking for additional information. It is listed under the Other Matters on tonight's agenda. Mr. Urice made a motion to table this until after they discuss item #2 under Other Matters. Mr. Manuel seconded the motion and it was passed unanimously.

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After a lengthy discussion, the Commission decided to send a recommendation on this referral and a separate report with the details to the ad hoc committee. Mr. Urice then made a motion to state that nothing has changed since their previous positive recommendation on this issue, so that positive recommendation still stands. Mr. Manuel seconded the motion and it was passed unanimously.

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OTHER MATTERS FOR REVIEW AND POSSIBLE ACTION:

City Council Ad Hoc Committee Request for Additional Information - Lease/License Agreement from BRT Corp. for City owned land at Crosby St. & Lee Hartell Dr.

Mrs. Emminger explained that the Council Ad Hoc Committee had met and referred this back to the Commission asking for additional information and/or possible recommendations with respect to the following questions.

- 1) Please provide a recommendation regarding the proposed lease of four City-owned parking spaces to BRT in the portion of the City-owned right of way at the corner of Crosby St. & Lee Hartell Dr.
- 2) Please provide a recommendation with respect to the City entering into a license agreement or contract use with BRT for four City-owned parking spaces in the portion of the City-owned right of way at the corner of Crosby St. & Lee Hartell Dr
- 3) Please provide further information with regard to the suitability of the site for the use of parking meters, easement requirements/feasibility and approval of parking spaces and seating ratio for parking spaces.
- 4) Please comment on the need for the City to acquire an easement from the owner of the accessway granting rights to pass and repass so that the general public would be able to gain access to the four metered spaces.

Mrs. Emminger suggested they discuss these questions individually and then formulate their responses. She said site is suitable for parking because it located within the public right-of-way. And the City Traffic Engineer has approved it for use of parking during the site plan review. And if the City allows the parking there, it would be by the use of a lease or license. Mr. Manuel said that was a good idea because then the City would have the opportunity or ability to terminate or revoke the license if the area is later needed for road widening. Mrs. Emminger said the Dept. does suggest that this is suitable for parking. The next question is that if this is suitable to be used for parking, is an easement required to get access to the spaces. Mrs. Emminger said it is and BRT would have to grant the City an easement to cross over his property to access our parking spaces.

The third question is if the proposed parking is suitable for parking meters. Mr. Keller said this Commission does not make those decisions. The Planning Dept. says that making that determination is within the purview of the Parking Authority and the City Council. However, as it relates to compliance with the Zoning Regulations, once the spaces are metered, they would become public parking. This means they could not be counted toward the required parking for the BRT site. Mr. Cerminara said Mr. Bertram won't give us an easement unless he gets the use of the spaces, so the issue of meters becomes a moot point. Mr. Keller asked how this area was used previously. Mrs. Emminger said it is in the City right-of-way and we are not allowing them to use it at all now. It is just a paved area. Regardless of the meter question, if the parking spaces are open to the general public, can BRT count the four spaces toward the parking required for their on-site uses. The Planning Dept. position is that we don't allow on-street parking to be counted toward required parking. Mr. Keller said he is not leasing the land, he is leasing the spaces. Mr. Manuel said once you put a meter on it, it becomes public parking. So if he gets the lease then he can count the spaces toward his parking.

Mr. Keller said there has been parking in this vicinity for a very long time and to change them to meters now might not be a good idea. Mr. Manuel said if they are public spaces, it is not the Planning Commission's purview to determine if this area is suitable for meters. If he is given a lease for them, then the meter issue becomes a moot point.

Mrs. Emminger said in response to the request for a seating ratio, she made up a table so that everything would be clear. She said earlier this year, the Zoning Board of Appeals had granted a variance to permit off-site parking in excess of 500 ft. from the site. This variance was conditioned

that it would only apply to employee parking. This variance freed up six spaces. She continued saying that unless the four spaces are committed to BRT by lease or license, they cannot be counted toward the required parking for this property. She went on to explain that she did a side-by-side comparison and if you remove the six employees from the calculation, those six spaces would allow for 24 additional restaurant seats. She said that these numbers did not include the four parking spaces under consideration.

Mr. Urice suggested that now that they have gone through these, they go back and answer each one individually.

- 1) The Commission gives a positive recommendation on the proposed lease of four City-owned parking spaces located within the City right-of-way at Crosby St. & Lee Hartell to BRT Corp.
- 2) The Commission recommends that an easement allowing the City to pass and repass be required in addition to the license agreement or contract between the City and BRT for the four City-owned parking spaces in the portion of the City-owned right of way at the corner of Crosby St. & Lee Hartell Dr.
- 3) The Commission does not feel that parking meters are within their purview. It is their opinion that parking meters should be regulated by the Police Dept. and the City Council.
- 4) The Commission states that if these four spaces are open and available to the general public, then BRT should not be allowed to count them toward their parking requirement. And as stated above, an easement would be needed from BRT to pass and repass their property if these spaces are to be classified as available City parking.
- 5) The Commission has determined that if BRT decides to lease these spaces from the City specifically for their use, once the lease is executed, they would be able to count these four spaces toward their required parking for the uses on that site. This could change the seating capacity in the Pizza Restaurant or the former coffee shop.

Mr. Urice made a motion to direct the Planning Dept. to draft a report including their comments and the ultimate findings. Ms. Hoffstaetter seconded the motion and it was passed unanimously.

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Letter from TPA Design Group requesting Lot Line Revision for Wooster School Subdivision (SUB #08-03) approved on 4/21/10.

Mrs. Emminger said the Commission had recently granted an extension to file the mylar for this subdivision. The conditions of the approval had said the notes on the mylar about the avigation easement had to be revised to the satisfaction of the Planning Dept. and the Airport Administrator. The mylar was finally signed and filed on the Land Records. On that same day, they filed a request for a lot line revision. Mrs. Emminger explained that this is not a typical situation where there is a land swap or a minor change to the boundary of a lot. In this case, they are proposing and increase in the size of the one of the lots from 17.37 acres to 63.37 acres. The Planning Dept. position is that due to scope of this expansion, they recommend that this go to public hearing. Mrs. Emminger continued saying that the State Statutes allow the Commission to do this if there is enough public interest. She said if the Commission wants to do this, the hearing could be scheduled for December 3rd. She added that we would make them provide us envelopes so the neighbors could be notified. The area of the Wooster School lot would be reduced from 94.94 acres to 48.94 acres if this is approved. The grand scheme was that this new lot initially was presented as one building lot, but we now know that they have filed a request for utility extensions for 57 units of cluster housing. That

request did not go anywhere because the new lot could not meet the Zoning requirements for that many units. They need to get the lot line revision before they can get the extensions approved. Mr. Urice made a motion to require a public hearing, to be held on December 3rd, for this lot line revision. Mr. Manuel seconded the motion.

Ms. Hoffstaetter said originally they were told this was just a two lot subdivision, so how can the Commission be sure that this is what they are ultimately proposing. Mrs. Emminger said this is just a lot line revision, what they are proposing to do will be covered under the special exception for the cluster subdivision. She said there are subdivision issues that the Commission could get into during this public hearing. And once the lot line revision is filed in the Land Records and they file the Special Exception application, then the Commission can get into the other issues. Ms. Hoffstaetter said it is good they will be giving the neighbors a heads up but they need to know their comments will be limited to certain topics. Mr. Cerminara said there is a substantial difference between the sizes of what was approved and what they are asking for now. Mr. Keller said it could have a tremendous impact on the infrastructure and the utilities. Mrs. Emminger said we expect full disclosure from applicant since we now know there is more to this than when it was previously presented. Mr. Manuel asked if preliminary plans have been filed. Mrs. Emminger said not for this. She added that they tried to when they filed the original subdivision application, so we don't know how this lot line revision will change those. Mr. Keller asked if there is a precedent for a lot line revision of this size. Mrs. Emminger said there is not. Mr. Manuel said this is a unique situation because they went to the trouble of making the original application for just one lot and did not explain that at that time that they might come back to adjust the lot lines. Mr. Urice asked if the lot that the 17 acres was cut out of will now be whole again. Mrs. Emminger said the total acreage remains the same, but as of now there are two lots. One is 17.37 acres and the other is 94.94 acres. Once the subdivision map was filed on the Land Records, what was the original one lot became these two lots. Mr. Keller called for a vote on the motion to require a public hearing for this lot line revision and it was passed unanimously with five AYES.

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Mr. Keller said there was nothing listed under Correspondence and six applications for Floodplain Permits listed under For Reference Only.

At 9:15 PM, Mr. Urice made a motion to adjourn. Ms. Hoffstaetter seconded the motion and it was passed unanimously.